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TRANSMITTAL OF APPEAL BRIEF (Large Entity)

Docket No.
US000363

In Re Application Of: J. A. Martino, et al.

13 / Appeal Brief
8-15-03
MP

Serial No.
09/739,512

Filing Date
December 18, 2000

Examiner
K. T. Nguyen

Group Art Unit
2674

Invention: **ADAPTABLE REMOTE CONTROL WITH EXCHANGEABLE CONTROLS**

TO THE COMMISSIONER FOR PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on

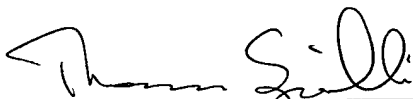
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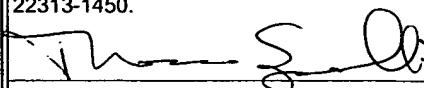

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Thomas Spinelli

cc:

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BRIEF ON APPEAL

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TABLE OF CONTENTS

	<u>PAGE</u>
I. INTRODUCTION	1
II. REAL PARTY OF INTEREST.....	1
III. RELATED APPEALS AND INTERFERENCES.....	2
IV. STATUS OF THE CLAIMS	2
V. STATUS OF THE AMENDMENTS	3
VI. SUMMARY OF THE INVENTION	3
VII. THE APPEALED CLAIMS	4
VIII. THE PRIOR ART RELIED UPON	6
IX. THE ISSUES	7
X. THE REFERENCES	7
XI. GROUPING OF THE CLAIMS	8
XII. APPELLANTS' ARGUMENTS	8
The rejection of Claims 1-19, on appeal, under 35 U.S.C. § 103, as being allegedly unpatentable over the combination of U.S. Patent No. 5,554,980 to Hashimoto et al. and U.S. Patent No. 6,227,687 to Kahwaji is improper.....	8
XIII. CONCLUSION	17
APPENDIX	18

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicant:	J.A. Martino, et al.	Art Unit:	2674
Serial No.:	09/739,512	Examiner:	K.T. Nguyen
Filed:	December 18, 2000	Docket:	US000363 (16196)
For:	ADAPTABLE REMOTE CONTROL WITH EXCHANGEABLE CONTROLS	Dated:	August 7, 2003

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BRIEF ON APPEAL

Sir:

I. INTRODUCTION

Pursuant to the provisions of 35 U.S.C. §§ 134 and 37 C.F.R. §§ 1.191 and 1.192, this paper is submitted as a brief setting forth the authorities and arguments upon which Appellants rely in support of the appeal from the Final Rejection of Claims 1-19 in the above-identified patent application on April 23, 2003.

II. REAL PARTY OF INTEREST

The real party of interest in the above-identified patent application is U.S. Philips Electronics.

III. RELATED APPEALS AND INTERFERENCES

Appellants respectfully submit that the present application is involved in no other appeal or interference besides the present Appeal.

IV. STATUS OF THE CLAIMS

The parent application, U.S. patent application Serial No. 09/739,512 was filed on December 18, 2000, originally included Claims 1-19.

In an Official Action dated November 6, 2002, the Examiner rejects claims 1-19 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,554,980 to Hashimoto et al. (hereinafter "Hashimoto") in view of U.S. Patent No. 6,227,687 to Kahwaji (hereinafter "Kahwaji").

In a Response under 37 C.F.R. § 1.111, filed February 3, 2003, Applicants argued that Hashimoto does not disclose or suggest (1) the "at least two objects, each associated with a respective data set consisting of at least one datum" as recited in independent claim 1, (2) "a mechanically connected combination of tokens, each associated with a data set" as recited in independent claim 6, (3) "tokens, each corresponding to a set of criteria pertaining selectively to a subset of said data" as recited in independent claim 12, and (4) "encoding tokens with unique identifiers" and "storing an address on a communication station, said address pointing to a respective

data set for each of said tokens" as is recited in independent claims 14 and 17.

Applicants further argued that Kahwaji does not disclose or suggest (1) the objects (or tokens) recited in the claims and (2) where the at least two objects "are tokens connected by a chain, a wire, string, or filament" or wherein said at least two objects "are beads."

In the Final Official Action, issued April 23, 2003, the Examiner reiterated the rejection of claims 1-19 as being unpatentable over Hashimoto and Kahwaji. Consequently, Claims 1-19 are the claims on appeal. A copy of the rejected claims is attached hereto in the Appendix.

V. STATUS OF THE AMENDMENTS

Appellants have not filed any amendments subsequent to the issuance of the Final Rejection of April 23, 2003.

VI. SUMMARY OF THE INVENTION

The present invention relates to remote controls which are personalized and which are capable of sharing information with other remote controls. Briefly, criteria defining preferences of a user are associated with objects which may be manipulated to perform the functions of recording user preferences regarding a controlled device such as a television, ranking choices of the device, controlling a

selector of the device, and transferring recorded preferences, such as rankings, between such objects. The specification, from page 2, line 20 to page 5, line 19 discusses illustrative embodiments of the present invention in detail.

VII. THE APPEALED CLAIMS

Claims 1-19 are on appeal before the Board of Patent Appeals and Interferences, with Claims 1, 6, 12, 14, and 17 being the independent claims. Independent Claim 1 is directed to a user interface, comprising: at least two objects, each associated with a respective data set consisting of at least one datum; a controller connected to a data store and programmed to perform an operation on said respective data sets; said controller having a receiver; at least one transmitter operatively associated with said at least two objects and responsive to a mechanical state of said at least two objects such that a control signal is transmitted to said receiver corresponding to an operation to be performed on at least one of said data sets and responsive to at least the other of said data sets, said controller being programmed to perform said operation. Claims 2-5 directly or indirectly depend upon Claim 1 and further limit the scope of Claim 1.

Claim 6 is directed to a user interface, comprising: a mechanically connected combination of tokens, each associated with a data set; a console interoperable with said tokens; said

console having a controller, a transmitter, and an interface; said controller being programmed such that a first mechanical configuration of one of said tokens, effective to interface said one of said tokens with said console, results in the transmission of a command indicating a data exchange operation involving said data set associated with said one of said tokens. Dependent Claims 7-11 directly or indirectly depend upon Claim 6 and further limit the scope of Claim 6.

Claim 12 is directed to a system for controlling a delivery of data to a terminal, comprising: tokens, each corresponding to a set of criteria pertaining selectively to a subset of said data; each of said tokens encoding an identifier; a transmitter operatively associated with said tokens; a data delivery terminal with a receiver for delivering said data to said terminal for display thereon; said transmitter being responsive to said identifier of at least a selected one of said tokens such that a command to filter said data is generated by said transmitter. Dependent Claim 13 directly depends upon Claim 12 and further limits the scope of Claim 12.

Claim 14 is directed to a method of accessing data, comprising: encoding tokens with unique identifiers; storing an address on a communication station, said address pointing to a respective data set for each of said tokens; transmitting

commands to said communication station to transfer from a first data set to a second data set responsively to a manipulation of said tokens corresponding to said first data set and said second data set. Dependent Claims 15 and 16 directly or indirectly depend upon Claim 14 and further limit the scope of Claim 14.

Claim 17 is directed to a method of accessing data, comprising: encoding tokens with unique identifiers; storing an address on a communication station, said address pointing to a respective data set for each of said tokens; manipulating said tokens; transmitting commands to said communication station to filter data delivered to said terminal responsively to criteria defined by said first data set and said second data set; said step of transmitting being responsive to a result of said step of manipulating. Dependent Claims 18 and 19 directly or indirectly depend upon Claim 17 and further limit the scope of Claim 17.

Each of the appealed claims, mentioned supra, is set forth in the Appendix.

VIII. THE PRIOR ART RELIED UPON

The references relied upon by the Examiner in rejecting Claims 1-19 are U.S. Patent No. 5,554,980 to Hashimoto et al. (hereinafter "Hashimoto") and U.S. Patent No. 6,227,687 to Kahwaji (hereinafter "Kahwaji").

X. THE ISSUES

The issue raised in the Final Rejection dated April 23, 2003 remaining for resolution is are Claims 1-19 on appeal patentable, under 35 U.S.C. § 103, over the combination of Hashimoto and Kahwaji.

X. THE REFERENCES

Hashimoto teaches a remote control unit for use with a controlled unit, such as a monitor. The remote control unit has a motion detector and a transmitter. The motion detector detects the motion of the remote control unit and transmits the same through the transmitter to the controlled unit. A controller in the controlled unit receives the motion detection signals from the remote control unit and moves a cursor on a display screen accordingly to correspond with the detected movement of the remote control unit.

Kahwaji teaches an interleaved illumination support. The support has a base and a wire coupled to the base. Beads are attached to the wire to fix leafs thereon which maintain the wire in tension. The beads are disclosed as being solid objects, such as fishing weights, having a bore for stringing the same on the wire.

XI. GROUPING OF THE CLAIMS

The prior art rejections of issue herein apply to more than one claim. Despite this, Appellant submits that the rejected claims stand or fall together.

XII. APPELLANT'S ARGUMENTS

The rejection of Claims 1-19, on appeal, under 35 U.S.C. § 103, as being allegedly unpatentable over the combination of Hashimoto and Kahwaji is improper.

In the Final Rejection, Claims 1-19 of the instant application were rejected under 35 U.S.C. § 103 as being allegedly unpatentable over the combination of Hashimoto and Kahwaji.

A. THE COMBINATION OF HASHIMOTO AND KAHWAJI DO NOT DISCLOSE ALL OF THE FEATURES OF THE REJECTED CLAIMS

The basis for the Examiner's rejection is that Hashimoto discloses all of the features of independent claims 1, 6, 12, 14, and 17 with the exception of the objects (or tokens) being beads connected by a wire, for which he cites Kahwaji.

With regard to Hashimoto, the same does not disclose or suggest the "at least two objects, each associated with a respective data set consisting of at least one datum" as recited in independent claim 1. Hashimoto further does not

disclose or suggest, "a mechanically connected combination of tokens, each associated with a data set" as recited in independent claim 6. Hashimoto further does not disclose or suggest "tokens, each corresponding to a set of criteria pertaining selectively to a subset of said data" as recited in independent claim 12. Hashimoto still further does not disclose or suggest "encoding tokens with unique identifiers" and "storing an address on a communication station, said address pointing to a respective data set for each of said tokens" as is recited in independent claims 14 and 17.

With regard to Kahwaji, the same discloses simple solid beads strung on a wire, Kahwaji does not disclose or suggest the objects (or tokens) recited in the claims. Kahwaji also does not disclose where the at least two objects "are tokens connected by a chain, a wire, string, or filament" or wherein said at least two objects "are beads." The beads of Kahwaji are actual beads, not the objects or tokens having the recited features in independent claims 1, 6, 12, 14, or 17 as discussed above and having a form of a bead.

Thus, independent claims 1, 6, 12, 14, and 17 are not rendered obvious by the cited references because neither the Hashimoto patent, nor the Kahwaji patent, whether taken alone or in combination, teach or suggest the user interface, system or methods having the features described above.

**B. THERE IS NO SUGGESTION OR MOTIVATION TO
COMBINE THE TEACHINGS OF HASHIMOTO AND
KAHWAJI**

In the Final Official Action, the Examiner responds to Applicant's previous arguments (Filed February 3, 2003) by simply stating that the previous argument "is not persuasive due to the teachings of combination of Kahwaji with two beads (100) and Hashimoto et al. as disclosed above." The Examiner makes no specific response with regard to the deficiencies of both Hashimoto and Kahwaji outlined above and in the response to the first Official Action.

Furthermore, assuming arguendo that the features of claims 1, 6, 12, 14, and 17 are shown in the combination of Kahwaji and Hashimoto, Applicants respectfully submit that there is no motivation or suggestion to combine Kahwaji with Hashimoto.

Recently the U.S. Court of Appeals for the Federal Circuit (the "Federal Circuit") restated the legal test applicable to rejections under 35 U.S.C. § 103(a) (*In re Rouffet*, 47 USPQ2d 1453 (Fed. Cir., July 15, 1998)). The Court stated:

[V]irtually all [inventions] are combinations of old elements. Therefore an Examiner may often find every element of a claimed invention in the prior art. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an Examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the

claimed invention. Such an approach would be "an illogical and inappropriate process by which to determine patentability." To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the Examiner to show a motivation to combine the references that create the case of obviousness. The Board [of Appeals] did not, however, explain what specific understanding or technological principle within the knowledge of one of ordinary skill in the art would have suggested the combination. Instead, the Board merely invoked the high level of skill in the field of the art. If such a rote indication could suffice to supply a motivation to combine, the more sophisticated scientific fields would rarely, if ever, experience a patentable technical advance. Instead, in complex scientific fields, the Board could routinely identify the prior art elements in an application, invoke the lofty level of skill, and rest its case for rejection. To counter this potential weakness in the obviousness construct **the suggestion to combine requirements stands as a critical safeguard against hindsight analysis and rote application of the legal test for obviousness.**

In re Rouffet, 47 USPQ2d 1457-58 (Fed. Cir., July 15, 1998) (citations omitted, emphasis added).

More recently, the Federal Circuit again dealt with what is required to show a motivation to combine references under 35 U.S.C. § 103(a). In this case the court reversed the decision of the Board of appeals stating:

[R]ather than pointing to specific information in Holiday or Shapiro that suggest the combination..., the Board instead described in detail the similarities between the Holiday and Shapiro references and the claimed invention, noting that one reference or the other-in combination with each other... described all of the limitations of the pending claims. Nowhere does the Board particularly identify any suggestion, teaching, or motivation to combine the ... references, nor does the Board make specific-or even inferential-findings concerning the identification of the relevant art, the level of

ordinary skill in the art, the nature of the problem to be solved, or any factual findings that might serve to support a proper obviousness analysis.

In re Dembiczak, 50 USPQ2d 1614, 1618 (Fed. Cir., April 28, 1999) (citations omitted).

Thus, from both *In re Rouffet* and *In re Dembiczak* it is clear that the Federal Circuit requires a specific identification of a suggestion, motivation, or teaching why one of ordinary skill in the art would have been motivated to select the references and combine them. This the Examiner has not done. The Examiner only states that it would be obvious "to utilize the teachings as taught by Kahwaji using tokens are beads in the system device as taught by Hashimoto et al. because this would allow the user adjusting the vertical height of each line source on the lamps and maintain the wire in tension" (see page 4 of the Final Official Action).

Applicants respectfully submit that the Examiner's reasoning is totally irrelevant to the present invention. The beads (or tokens or objects) of the present invention are each associated with a respective data set consisting of at least one datum, for example beads 310, 312, 314, 340, 345, 350, 355, 363, and 367 in Figures 2A, 2B, and 3 of the present application. The beads interact with a controller (for example controller 320 in Figures 2A, 2B, and 3) through a transmission operatively associated with the beads. In an embodiment, the beads are interconnected by a filament, chain, string, or wire.

As discussed above, Kahwaji teaches a lamp having a wire with interleaved leafs. Beads are attached to the wire to fix the leafs thereon which maintains the wire in tension. The beads are disclosed as being solid objects, such as fishing weights, having a bore for stringing the same on the wire. There is absolutely no suggestion or motivation for using the simple beads of Kahwaji in the electronic device of Hasimoto or in any device other than a mechanical device. The Examiner argues that the combination would allow the user to adjust the vertical height of each line source on the lamps and maintain the wire in tension. These are the objectives of Kahwaji and are totally irrelevant to the objectives of the present invention, which is directed to a user interface.

Thus, Applicants respectfully submit that the Examiner, without identifying a suggestion, motivation, or teaching for combining the references, has used impermissible hindsight to reject claims 1-19 under 35 U.S.C. § 103(a). To prevent the use of hindsight based on the invention to defeat patentability of the invention, the Examiner is required to show a motivation to combine the references that create the case of obviousness. Applicants respectfully submit that the Examiner has not met this burden.

In light of the state of the law as set forth by the Federal Circuit and the Examiner's lack of specificity with

regard to the motivation to combine the cited references, the applicant respectfully submits that the rejection for obviousness under 35 U.S.C. § 103(a) lacks the requisite motivation and must be withdrawn.

C. KAWAJI IS NON-ANALOGOUS ART

In addition, Applicants respectfully submit that the Kahwaji reference is not proper because it is from a non-analogous art. To be considered analogous art, the references cited by the Examiner must be either in the same field as the invention or be reasonably pertinent to the problem faced by the inventor.¹ Applicants respectfully submit that neither of these requirements have been met in the present case.

With regard to the first prong of the non-analogous art test, namely, whether a reference is within the field of the invention, the Federal Circuit has stated:

We have reminded ourselves and the PTO that it is necessary to consider "the reality of the circumstances" -in other words, common sense- in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor.²

¹ See, e.g., *In re Clay*, 966 F.2d 656, 23 USPQ 2d 1058 (Fed. Cir. 1992); *In re Paulsen*, 30 F.3d 1475, 31 USPQ 2d 1671 (Fed. Cir. 1994); and *Wang Labs., Inc. v. Toshiba Corp.*, 993 F.2d 858, 26 USPQ 2d 1767 (Fed. Cir. 1993).

² *In re Oetiker*, 977 F.2d 1443, 24 USPQ 2d 1443, 1446 (Fed. Cir. 1992).

Thus, a case-by-case analysis must be made to determine if a person of ordinary skill would look to the fields of the references for a solution to the problem facing the inventor.³

In clarifying how to determine the second prong of the test, namely, whether a reference is reasonably pertinent to the particular problem with which an inventor was involved, the Federal Circuit has stated that:

[a] reference is reasonably pertinent if ... it is one which, because of the matter with which it deals, logically would have commended itself to the inventor's attention in considering his problem ... If a reference disclosure has the same purpose as the claimed invention, the reference relates to the same problem ... [I]f it is directed to a different purpose, the inventor would accordingly have had less motivation or occasion to consider it.⁴

With regard to the first prong of the non-analogous art test, and in view of the Federal Circuit's narrow view of what is in the same field of endeavor,⁵ it cannot be said that the Kahwaji reference is within the same field of endeavor as the present invention, which is directed to a user interface.

³ Id. See also, *In re Wright*, 848 F.2d 1216, 6 USPQ 2d 1959, 1962 (Fed. Cir. 1988) ("[A]s with all section 103 decisions, judgement must be brought to bear based on the facts of each case.").

⁴ *In re Clay*, 23 USPQ 2d at 1060-1061.

⁵ In *Wang Laboratories*, 26 USPQ 2d 1767, in which the present invention related to memory circuits and the cited reference referred to compact modular memories, the Federal Circuit held that the cited references were not in the same field of endeavor, stating that the reference "... is not in the same field of endeavor as the claimed subject matter merely because it relates to memories."

The Kahwaji reference, which is directed to a lamp, is not even remotely related to a user interface. Thus, Applicants respectfully submit that the Kahwaji reference is not in the same field of endeavor as the present invention.

With regard to the second prong of the non-analogous test, Applicant respectfully submits that the Kahwaji reference is not reasonably pertinent to the particular problem with which the inventor of the present invention was involved.

As discussed above and at length in the specification, the present invention is directed to easily programming and customizing certain electronic devices, such as a computer. This is a very different problem then faced by the inventors of the Kahwaji reference. In Kahwaji, the problem faced by the inventor was in supporting a wire-line type of lamp. Thus, Kahwaji was not faced with the same problem as the inventor of the present invention. To paraphrase the words of the Federal Circuit, the matter with which the Kahwaji reference deals, logically would not have commended itself to the inventor's attention in considering their problem. Thus, since it is directed to different purposes, the inventors would accordingly have had no motivation or occasion to consider it.

Accordingly, Applicants respectfully submit that at least the Kahwaji reference is not in the same field of endeavor as the present inventions, nor is it reasonably

pertinent to the particular problem with which the inventors of the present invention were involved.

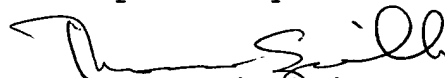
Therefore, based on the above arguments and remarks, Appellants respectfully submit that the claims of the instant invention on appeal are not obvious over the combination of Hashimoto and Kahwaji. Consequently, the rejection of the claims based on the Hashimoto and Kahwaji references is in error.

XIII. CONCLUSION

In view of the remarks submitted hereinabove, the references applied against Claims 1-19 on appeal do not render those claims unpatentable under 35 U.S.C. § 103. Thus, Appellants submit that the § 103 rejection is in error and must be reversed.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment in connection herewith to Deposit Account No. 19-1013/SSMP. A triplicate copy of this sheet is enclosed.

Respectfully submitted,



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APPENDIX

CLAIMS ON APPEAL: CLAIMS 1-19
Application Serial No. 09/739,512

1. (Original) A user interface, comprising:
at least two objects, each associated with a
respective data set consisting of at least one datum;
a controller connected to a data store and programmed
to perform an operation on said respective data sets;
said controller having a receiver;
at least one transmitter operatively associated with
said at least two objects and responsive to a mechanical state
of said at least two objects such that a control signal is
transmitted to said receiver corresponding to an operation to
be performed on at least one of said data sets and responsive
to at least the other of said data sets, said controller being
programmed to perform said operation.
2. (Original) A user interface as in claim 1,
wherein said at least two objects are tokens connected by a
chain, a wire, string, or filament.
3. (Original) A user interface as in claim 2,
wherein said at least two objects are beads.

4. (Original) A user interface as in claim 1, further comprising a console operatively associated with said at least two objects, said console housing said transmitter.

5. (Original) A user interface as in claim 4, wherein said console has a display and at least one control switch, said control signal being responsive to data entered through said at least one control switch and an image of said display being responsive to said control switch.

6. (Original) A user interface, comprising:
a mechanically connected combination of tokens, each associated with a data set;
a console interoperable with said tokens;
said console having a controller, a transmitter, and an interface;
said controller being programmed such that a first mechanical configuration of one of said tokens, effective to interface said one of said tokens with said console, results in the transmission of a command indicating a data exchange operation involving said data set associated with said one of said tokens.

7. (Original) A user interface as in claim 6, wherein said console has at least one control switch to which said command is responsive.

8. (Original) A user interface as in claim 6, wherein said tokens are beads connected by one or more flexible connectors.

9. (Original) A user interface as in claim 6, wherein said interface includes a contact elements that is configured to permit said controller to detect a presence of a one of said tokens that is in contact with said interface.

10. (Original) A user interface as in claim 6, wherein each of said tokens contains a unique encoded signature transmittable to said controller via said interface such that said controller may distinguish among said tokens.

11. (Previously Amended) A user interface as in claim 6, wherein each of said tokens has a device containing a code uniquely identifying said token such that said controller can distinguish between said tokens.

12. (Original) A system for controlling a delivery of data to a terminal, comprising:

tokens, each corresponding to a set of criteria pertaining selectively to a subset of said data;

each of said tokens encoding an identifier;

a transmitter operatively associated with said tokens;

a data delivery terminal with a receiver for delivering said data to said terminal for display thereon;

said transmitter being responsive to said identifier of at least a selected one of said tokens such that a command to filter said data is generated by said transmitter.

13. (Original) A system as in claim 12, wherein said criteria are stored on a server connected to said data delivery terminal, said identifier being used by said terminal to derive a unique server address of said server.

14. (Original) A method of accessing data, comprising:

encoding tokens with unique identifiers;

storing an address on a communication station, said address pointing to a respective data set for each of said tokens;

transmitting commands to said communication station to transfer from a first data set to a second data set responsively to a manipulation of said tokens corresponding to said first data set and said second data set.

15. (Original) A method as in claim 14, wherein said manipulation includes forming a communication connection between a console and said tokens corresponding to said first and second data sets.

16. (Original) A method as in claim 14, wherein said step of transmitting includes transmitting said unique identifiers of said tokens corresponding to said first and second data sets.

17. (Original) A method of accessing data, comprising:

encoding tokens with unique identifiers;

storing an address on a communication station, said address pointing to a respective data set for each of said tokens;

manipulating said tokens;

transmitting commands to said communication station to filter data delivered to said terminal responsively to criteria defined by said first data set and said second data set;

said step of transmitting being responsive to a result of said step of manipulating.

18. (Original) A method as in claim 17, wherein said step of manipulating includes bringing said tokens corresponding to said first and second data sets into proximity with a console and transferring said unique identifiers to said console.

19. (Original) A method as in claim 18, wherein said step of transmitting includes transmitting said unique codes of said first and second data sets.